

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 INSURANCE COMPANY OF THE STATE OF )  
9 PENNSYLVANIA, )

10 Plaintiff, )

11 vs. )

12 GEMINI INSURANCE CO. et al., )

13 Defendants. )  
14 \_\_\_\_\_ )

2:13-cv-02211-RCJ-PAL

**ORDER**

15 Plaintiff Insurance Company of the State of Pennsylvania sued three Defendants in  
16 diversity in this Court on December 2, 2013, seeking several declarations as to the parties' rights  
17 and responsibilities under excess liability insurance policies, as well as monetary damages under  
18 theories of equitable subrogation and indemnity. No Defendant has appeared, and no evidence of  
19 service appears in the record, except for a December 12, 2013 waiver of service by Defendant  
20 Gemini Insurance Co. ("Gemini") indicating that it has sixty (60) days from December 10, 2013  
21 to answer or defend under Rule 12. (*See* Waiver of Service, Dec. 12, 2013, ECF No. 24).

22 Plaintiff, however, filed two offensive motions for summary judgment on December 3  
23 and 4, 2013, respectively. No party had been served or had waived service when Plaintiff filed  
24 those motions. In fact, the Clerk had not yet even issued the Summonses. Rule 56(b) permits a  
25 party to file such a motion at any time before 30 days after the close of discovery. The motions

1 are therefore not technically premature. However, the time to respond to the motions in this case  
2 will expire before the non-movants are required to appear and defend. It is clear that a  
3 prejudicial due process violation would result from the adjudication of an offensive summary  
4 judgment motion in favor of a plaintiff at a time when the relevant defendant has time remaining  
5 to answer or otherwise defend, or, moreover, has not even yet been served with a summons and  
6 complaint or waived service thereof. The Court will therefore deny the motions, without  
7 prejudice. Plaintiff may refile the motions, if necessary, after all parties have been served, have  
8 waived service, or have defaulted, and after the time to file an answer or otherwise defend under  
9 Rule 12 has lapsed.

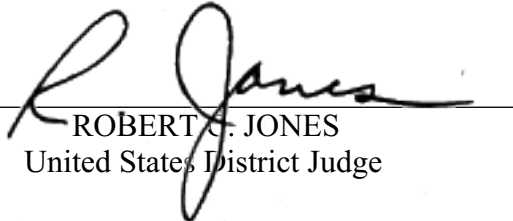
10 **CONCLUSION**

11 IT IS HEREBY ORDERED that the Motions for Summary Judgment (ECF Nos. 7, 10)  
12 are DENIED.

13 IT IS FURTHER ORDERED that the Motion to Seal (ECF No. 13) is DENIED as moot.

14 IT IS SO ORDERED.

15 Dated this 10<sup>th</sup> day of January, 2014.

16   
17 ROBERT C. JONES  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25